

# BUSINESS LAW SECTION

## CORPORATIONS COMMITTEE

### COMMITTEE MEETING MINUTES FOR OCTOBER 11, 2002

Friday, October 11, 2002  
Monterey

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held at the Monterey Marriott Hotel in Monterey on October 11, 2002. Attendance was as follows:

#### MEMBERS PRESENT:

Keith Paul Bishop  
David S. Caplan  
John C. Carpenter  
Nelson D. Crandall  
Bruce Dravis  
James K. Dyer, Jr.  
Timothy J. Fitzpatrick  
James F. Fotenos  
Steven K. Hazen

Mark T. Hiraide  
B. Keith Martin  
David M. Pike  
Cynthia Ribas  
Randall B. Schai  
James R. Walther  
Neil J. Wertlieb  
Nancy Wojtas

#### MEMBERS ABSENT:

Teri Shugart Erickson  
Carol K. Lucas  
Eileen Lyon  
Brian D. McAllister  
Ethna M. Piazza  
Daniel Weiser

#### LIAISONS PRESENT:

Michelle Livsey, Secretary of State

#### GUESTS PRESENT:

Ann Yvonne Walker, Co-Chair of State Bar Sections  
Terry Miller, Legislative Office of the State Bar

The minutes summarize discussions primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda which are not described in these Minutes.

#### I. ADMINISTRATIVE MATTERS.

**A. Opening Remarks and Announcements.** The meeting was brought to order by Co-Chair Neil Wertlieb at approximately 9:00 a.m. Mr. Wertlieb asked members and guests to introduce themselves. Mr. Wertlieb then announced the following new officers for the Committee's next fiscal year:

**Name**

**Position**

Keith Paul Bishop	Co-Chair
Bruce Dravis	Co-Chair
David M. Pike	Vice-Chair, Education
Brian D. McAllister	Vice-Chair, Communication
Nancy Wojtas	Vice-Chair, Legislation
James K. Dyer, Jr.	Secretary

Mr. Wertlieb also reported that the Committee will add five new members and lose three members (Lucas, Lyon and Caplan) next year. Mr. Wertlieb further reported that David Caplan will be moving to the Executive Committee.

Mr. Wertlieb also noted that the next meeting of the Committee will be November 1st at the Los Angeles Marriott Hotel. Mr. Wertlieb further reported that the 2003 Spring Meeting of the Business Law Section will be held in Los Angeles in April 2003.

**B. Approval of Minutes of September 6, 2002 Meeting.** The draft minutes of the meeting of the Committee held on September 6, 2002 and previously circulated to the members of the Committee were approved with minor comments.

## II. LIAISONS' REPORTS AND DISCUSSION.

**A. Secretary of State.** Michelle Livsey from the Secretary of State's office reported that they have completed consolidation of the corporations and partnership filing units. She also noted that the office is working on implementing procedures to deal with newly adopted legislation and will post new forms on the Secretary of State's website by year-end. Mr. Bishop noted that there are some technical problems with the newly adopted AB55 regarding collecting filing fees and that a technical corrections bill may be necessary. Members also discussed issues involved with on-line access to information required by AB55. Mr. Wertlieb commented that the Committee is very interested in AB55 and would like to work with the Secretary of State's office on implementation issues.

**B. Partnerships and Limited Liability Companies Committee.** Mr. Hazen reported that the Partnerships Committee is meeting today and will be focusing primarily on the revised limited partnership act.

## III. PENDING LEGISLATION/AFFIRMATIVE LEGISLATIVE PROPOSALS.

**A. SB399 (corporate conversions).** Mr. Wertlieb reported that SB399 was signed by the Governor. Mr. Wertlieb commended the many members who worked on this project, particularly Messrs. Dravis and Stansell as well as Terry Miller from the Legislative Office of the State Bar. Mr. Fotenos noted that SB399 might be a good idea for an article.

**B. AB55 Corporate Disclosure.** Members discussed newly enacted AB55, in particular, penalties for failure to comply with the new reporting requirement and coordination of disclosure requirements under AB55 with current SEC disclosure requirements. Members agreed that the Committee should start working on a technical corrections bill before December, if possible, so that a bill can be introduced in the legislation by early next year. The Committee agreed to appoint a task force consisting of Messrs. Bishop, Dravis, Fitzpatrick and Wertlieb and Ms. Wojtas to review AB55 issues and deliver a legislative proposal to amend the new statute.

**C. Report of Legislative Liaison.** Mr. Fotenos summarized the following legislation of interest to

the Committee:

- **AB55 (Shelley)**  
Signed by Governor.
- **AB1875 (Nakano and Correa)**  
Signed by Governor.
- **AB2355 (Campbell)**  
Signed by Governor.
- **AB2969 (Flores)**  
Signed by Governor.
- **SB399 (Ackerman)**  
Signed by Governor.
- **SB1473 (Machado)**  
Renumbered as SB1926. Signed by Governor.

#### **IV. POTENTIAL AFFIRMATIVE LEGISLATIVE PROPOSALS.**

**A. Secretary of State Fax Filings.** Mr. Dravis reported that the legislative proposal regarding fax filing has been approved by the Executive Committee and has been sent to other State Bar sections for review and comment.

**B. 25118(b) Definition of Aggregate Evidence of Indebtedness.** Mr. Walther said that this agenda item would be discussed at next month's meeting and requested that members of the Committee review the memorandum prepared by Mr. Weiser prior to the next meeting and be prepared to discuss whether the Committee should pursue proposed legislation to amend Section 25118(b) and the scope of any such amendment.

**C. Amend Corporations Code to Permit Electronic Communications to Constitute a "Writing."** Randall Schai reported that work on this project has been delayed and that he is putting together a revised working group consisting of himself and Mr. McAllister to renew work on this project. Mr. Schai said that he would provide the Committee with a status report at the November 1st meeting.

**D. Amend Finance Lenders Law.** Mr. Bishop reported that the legislative proposal is with the State Bar for review and approval.

#### **V. WEBSITE PROJECTS.**

**A. Website Update.** David Caplan noted that management of the website has been transferred to Brian McAllister and he commended Mr. McAllister for his good work.

#### **VI. OTHER PROJECTS.**

**A. Opinion Project.** Mr. Wertlieb noted that all members of the Committee had received from Nelson Crandall an annotated version of the first section of the Opinion Report and said that it was a very useful guide to organizing an approach to revising and rewriting the Opinion Report. Mr. Crandall said that he would have the rest of the annotated report completed soon and would then distribute it to members of the Committee. Mr. Wertlieb said that the next step should be to develop a time schedule for completing the project. Mr. Crandall said that he would prepare a draft timetable and circulate it to members of the Committee. Finally, Mr. Wertlieb concluded that the Committee should examine the composition of the various working groups for this project and

adjust the members of each group to take into account members joining or leaving the Committee.

**B. Educational Activities.** Mr. Pike reported that the Committee had proposed three programs for the BLS Winter Education Institute and (i) The Sarbanes-Oxley Act of 2002 - six months later, (ii) covenants not to compete, and (iii) Nevada law for the California practitioner.

Members also discussed possible topics for presentation at the Spring Meeting of the Business Law Section, where the theme will be ethics and corporate governance, and agreed on the following three topics for panel presentations at the meeting: (i) professional responsibility of California corporate lawyers under California law, ABA rules and federal law, (ii) corporate governance for the California lawyer under the Sarbanes-Oxley Act of 2002, NASD and NYSC rules and California AB55 and (iii) foreign corporations doing business in California under AB55 and Corporations Code Section 2115. Ann Walker noted that the BLS Spring Meeting is being held at the same time as the American Bar Association Annual Meeting and that this would be a good opportunity to attract speakers attending the ABA meeting for the Committee's presentations.

**C. Guide to Organizing a California Corporation.** Mr. Martin reported that he received the materials for this project from Eileen Lyon last week and that he will work to complete this project, with a target date of June 30, 2003 for having materials at the printer. Mr. Martin further reported that he will have a conference call with the working group for this project before the November 1st meeting of the Committee to allocate tasks for completion. Mr. Wertlieb noted that the Executive Committee feels that this is an important project and it should be a priority for the upcoming year.

**D. Blue Sky Guide.** Mr. Bishop reported that this project must be pushed to completion. He noted that everyone working on this project is a former member of the Committee and that it would be helpful to have one or more current members of the Committee working on this.

**E. "Junction Box" Initiative.** Mr. Fotenos noted that there is a relevant article entitled "Proposed Model Inter-Entity Transaction Act" in the August 2002 issue of The Business Lawyer.

**F. Recruiting New Members.** Mr. Wertlieb commented that members of the Committee should consider ways to increase the Committee's access to qualified candidates to serve on the Committee. Mr. Walther noted that this outreach should include efforts to broaden representation on the Committee by women and minorities. Members discussed methods of increasing interest in serving on the Committee including direct mail and/or email communications to Section members.

## **VII. NEW BUSINESS**

**A. Special Purpose Entities and FASB.** Mr. Wertlieb noted that this month's meeting materials include (i) a memorandum from Mr. Hazen regarding the September 30, 2002 FASB Open Roundtable regarding the exposure draft on proposal interpretation of ARB51 and (ii) a copy of a letter from Mr. Hazen to the FASB regarding comments to the exposure draft. Mr. Bishop has also drafted a comment letter to FASB. The Committee unanimously approved Mr. Bishop's letter (with Mr. Walther abstaining), which now must be sent to the Executive Committee for approval.

### **B. Closing Remarks**

Mr. Dravis presented Messrs. Wertlieb and Walther each with a small gift as a token of the Committee's appreciation for their work as Co-Chairs over the past year. Mr. Wertlieb briefly reviewed the many accomplishments of the Committee during the past year including:

- an expanded working relationship with the Secretary of State and the Department of Corporations;
- continuing relationships with the SEC and the NASD through their liaisons to the

Committee,

- an excellent Committee website;
- the ongoing work of the opinion project;
- passage of SB399;
- progress in working with the Secretary of State in connection with fax filings;
- other legislative initiatives (technical corrections bill, investment adviser exemption, input on AB55, 25102(o) regulations and amendments to Section 710);
- good educational panels;
- publishing an article by Cynthia Ribas in The Business Law News;
- presentation by Brad Clark to the Committee on nonprofit corporations;
- recruiting new members of the Committee; and
- the members' dinner this evening.

Mr. Bishop, as incoming Co-Chair of the Committee, thanked Messrs. Wertlieb and Walther for all their work during the past year. Members concurred in their expressions of gratitude for the outstanding job done by Messrs. Wertlieb and Walther.

The meeting was adjourned at approximately 11:15 a.m.

/s/ David M. Pike  
David M. Pike  
Secretary

### **Corporation Committee Meeting Minutes**

